

FCC MAIL SECTION

Federal Communications Commission

FCC 97-392

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DISPATCHED BY **Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket 97-140
Local Exchange Carriers')	
Payphone Functions and Features)	
)	
Bell Atlantic Telephone Companies)	
Revisions to Tariff F.C.C. No. 1)	Transmittal Nos. 962 and 966
)	
GTE System Telephone Companies)	
Revisions to Tariff F.C.C. No. 1)	Transmittal Nos. 206 and 1112
)	
GTE Telephone Operating Companies)	
Revisions to Tariff F.C.C. No. 1)	Transmittal Nos. 1095 and 217

MEMORANDUM OPINION AND ORDER

Adopted: October 27, 1997

Released: October 29, 1997

By the Commission:

I. INTRODUCTION

1. In this Order, we terminate our investigation of the rates set forth in the above-captioned federal access tariffs filed by the Bell Atlantic Telephone Operating Companies (Bell Atlantic), GTE Systems Telephone Companies (GSTC), and GTE Telephone Operating Companies (GTOC) (collectively "GTE") applicable to the offering of various unbundled payphone features and functions. We find that it is not necessary to address the lawfulness of the rates initially at issue in this proceeding because those rates have been superseded by recently filed rates and because the carriers had no customers for the services offered under the initial tariffs. We further find no basis for finding Bell Atlantic's subsequently filed rates unlawful. We find, however, that GTE has failed to adequately justify its nonrecurring charge for installation of a feature called Selective Class of Call Screening (SCOCS). We therefore find this charge unlawful. We direct GTE to file a revised tariff within five days from the release date of this Memorandum Opinion and Order striking this charge from its tariff. We do not direct refunds with respect to the nonrecurring charge for SCOCS because, as with its initially filed tariff, GTE does not have as yet customers for its payphone features and functions offered under its revised tariff.

II. BACKGROUND

2. Section 276 of the Act establishes a federal regulatory regime designed to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.¹ In the *Payphone Reclassification Proceeding*² the

¹ 47 U.S.C. § 276(b)(1).

Commission adopted regulatory requirements implementing Section 276. The Commission required, *inter alia*, that incumbent LECs file tariffs for basic payphone lines at the state level, and that payphone specific unbundled features and functions provided by LECs to their own payphone operations or to others be tariffed at both state and federal levels.³ In the *Payphone Clarification Order*, the Bureau stated that tariffs for payphone services, including unbundled features and functions filed pursuant to the *Payphone Reclassification Proceeding*, must be cost-based, nondiscriminatory, and consistent with both Section 276 and the *Computer III* tariffing guidelines.⁴ In the *Payphone Order*, the Commission concluded that the "new services" test should be used to price payphone services, including, in particular, the pricing of unbundled features and functions tariffed at the interstate level.⁵ The new services test is a cost-based test that establishes the direct cost of providing the new service as a price floor.⁶ LECs then add a reasonable level of overhead costs to derive the overall price of the new service.⁷

3. On May 19, 1997, Bell Atlantic, GSTC, and GTOC filed their Transmittal Nos. 962, 206, and 1095, respectively, to make available various payphone features and functions under their federal

² *Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) (*Payphone Order*); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (*Payphone Reconsideration Order*), *aff'd in part and remanded in part, sub nom. Illinois Public Telecommunications Assn. v. FCC and United States*, Case No. 96-1394 (D.C. Cir. July 1, 1997).

³ *Payphone Reconsideration Order*, 11 FCC Rcd at 21307-09.

⁴ *Implementation of the Payphone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, Order, DA 96-678 (Com. Car. Bur., rel. April 4, 1997) (*Payphone Clarification Order*) at para. 2, citing *Payphone Reconsideration Order*, 11 FCC Rcd at 21308. The *Payphone Clarification Order* also granted a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions allowing LECs to file the required tariffs within 45 days after the release of that Order, with a scheduled effective date no later than 15 days after the date of filing. *Id.* at para. 1.

⁵ *Payphone Order*, 11 FCC Rcd at 20614.

⁶ See *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), *recon.*, *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration Order*); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*) *erratum*, *Filing and Review of Open Network Architecture*, Erratum, 5 FCC Rcd 4045, *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993), *recon.*, *Filing and Review of ONA Plans*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order*); *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, 6 FCC Rcd 7646, 7649-50 (1991) (*BOC ONA Further Amendment Order*), *pet. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (collectively "*BOC ONA Proceeding*"); *Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, 4531 (1991) (*Part 69 ONA Order*).

⁷ *Id.* For purposes of this order, an overhead loading is defined as the percent by which a rate exceeds the direct cost for a particular service.

access tariffs.⁸ On May 27, 1997, the American Public Communications Council (APCC) filed petitions urging the Commission to reject, or alternatively, to suspend and investigate these transmittals.⁹ On June, 2, 1997, replies to these petitions were filed by Bell Atlantic and GTE.¹⁰

4. In the *Suspension Order*, the Competitive Pricing Division (Division) of the Bureau concluded that these transmittals raised significant questions of lawfulness, including whether the proposed rates were unreasonably discriminatory in violation of Section 202(a) of the Act, were unjust and unreasonable in violation of Section 201(b) of the Act, and whether they included any subsidy, preference, or discriminatory provision in violation of Section 276 of the Act.¹¹ In the *Designation Order*, the Bureau designated the following issues for investigation: (1) whether Bell Atlantic's proposed overhead loading for unbundled payphone features was unreasonable and excessive under the new services test; (2) whether Bell Atlantic's determination of rates was consistent with the new services test; (3) whether GTE's direct investment for SCOCs was reasonable; and (4) whether GTE's rates for SCOCs were consistent with the new services test.¹² On September 3, 1997, Bell Atlantic and GTE filed their direct cases in response

⁸ Bell Atlantic Access Tariff FCC No. 1, Transmittal No. 962; GSTC Access Tariff FCC No. 1, Transmittal No. 206; and GTOC Access Tariff FCC No. 1, Transmittal No. 1095.

⁹ Petitions of APCC to Suspend and Investigate Bell Atlantic Transmittal No. 962 ("APCC (BA) Petition"), GSTC Transmittal No. 206 ("APCC (GSTC) Petition"), and GTOC Transmittal No. 1095 ("APCC (GTOC) Petition").

¹⁰ Reply of Bell Atlantic to APCC Petition to Suspend and Investigate Bell Atlantic Transmittal No. 962 ("Bell Atlantic Reply"); Reply of GTE Service Corporation to APCC Petition to Suspend and Investigate GSTC Transmittal No. 206 and GTOC Transmittal No. 1095 ("GTE Reply").

¹¹ *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Suspension Order, DA 97-1149 (Com. Car. Bur., Comp. Pric. Div., rel. June 2, 1997) (*Suspension Order*). The *Suspension Order* required the carriers to advance by one day the effective date of each of these transmittals, to June 2, 1997, suspended each transmittal for one day to June 3, 1997, initiated an investigation, and imposed an accounting order. See *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Erratum, DA 97-74559 (Com. Car. Bur., Comp. Pric. Div., rel. June 5, 1997). The *Suspension Order* also suspended and initiated an investigation of the NYNEX Telephone Companies (NYNEX) Transmittal No. 452. On July 2, 1997, the Division, on its own motion, reconsidered that Order with respect to NYNEX Transmittal No. 452 and found, based on the record before it, that the NYNEX transmittal did not warrant investigation and that the investigation of the transmittal should be terminated. *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Order on Reconsideration, DA 97-1396 (Com. Car. Bur., Comp. Pric. Div., rel. July 2, 1997). On June 9, 1997, Bell Atlantic filed Transmittal No. 966, which, among other things, adjusted a rate that it stated was incorrectly displayed in its earlier Transmittal No. 962. On June 11, 1997, the Division released an order finding that Bell Atlantic's proposed rate adjustment raised the same issues of lawfulness as Transmittal No. 962. *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Suspension Order, DA 97-1233 (Com. Car. Bur., Comp. Pric. Div., rel. June 11, 1997). Accordingly, the Division suspended Transmittal No. 966 for one day insofar as it proposed to adjust rates made available under Transmittal No. 962. In addition, the Division instituted an investigation of that part of the transmittal, consolidated that investigation with the pending investigation of Bell Atlantic Transmittal No. 962, and imposed an accounting order. *Id.*

¹² *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Order Designating Issues for Investigation, DA 97-1764 (Com. Car. Bur., rel. Aug. 19, 1997) (*Designation Order*).

to the *Designation Order*.¹³ On September 10, 1997, APCC filed a joint opposition to the direct cases filed Bell Atlantic and GTE.¹⁴ On September 17, Bell Atlantic and GTE filed their rebuttals.¹⁵ On October 8, 1997, Bell Atlantic filed Transmittal No. 1004, which proposed to revise rates for the unbundled payphone features made available under its initial tariff that are at issue in this investigation. APCC filed comments in response to the Bell Atlantic tariff revisions on October 10, 1997. The Division suspended this tariff for one day and allowed the tariff to become effective subject to this investigation.¹⁶ On September 5, 1997, GTE filed Transmittal Nos. 217 and 1112, which also proposed to revise the rates for the SCOCs payphone features made available in its earlier federal access tariffs.¹⁷ No petitions were filed against the GTE transmittals. The Division suspended these tariffs for one day and allowed the tariffs to become effective subject to this investigation.¹⁸

III. INVESTIGATION ISSUES

A. Bell Atlantic Transmittals

1. Background and Contentions

5. In Transmittal No. 962, Bell Atlantic proposed to include in its federal access tariff six unbundled payphone features.¹⁹ Bell Atlantic stated that these services would assist independent payphone service providers in making payphone services available to the public by providing services, among others, that can aid customers in preventing fraudulent calls from their payphones. Bell Atlantic stated in its initial explanation submitted with the tariff that it determined the rates for unbundled payphone features on the basis of "the cost, the pricing of these service features as they currently exist in Bell Atlantic's intrastate tariffs, the available competitive alternatives, and other information on the value of these

¹³ Direct Case of Bell Atlantic in CC Docket 97-140 ("Bell Atlantic Direct Case"); Direct Case of GTE Service Corporation in CC Docket 97-140 ("GTE Direct Case").

¹⁴ Opposition of the American Public Communications Council to the Direct Cases of Bell Atlantic and GTE ("APCC Opposition").

¹⁵ Reply of Bell Atlantic to APCC Opposition in CC Docket 97-140 ("Bell Atlantic Reply"); GTE's Rebuttal in CC Docket 97-140 ("GTE Rebuttal").

¹⁶ *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Order, DA 97-2194 (Com. Car. Bur., Comp. Pric. Div., rel. Oct. 14, 1997).

¹⁷ GTOC Tariff F.C.C. No 1, Transmittal No. 217 and GSTC Tariff F.C.C. No. 1, Transmittal No. 1112 filed September 5, 1997.

¹⁸ *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Order, DA 97-2035 (Com. Car. Bur., Comp. Pric. Div., rel. Sept. 19, 1997).

¹⁹ Bell Atlantic Transmittal No. 962, Description and Justification (D&J) at 2. These unbundled Bell Atlantic features are line-side answer supervision (LSAS), inward callblocking, outward callblocking, incoming/outgoing call screening, outward call screening, and limited interLATA dialing. *Id.* Pursuant to Section 276(d) of the Act, the term "payphone service" is defined as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d).

services."²⁰

6. In the *Designation Order*, the Bureau examined the ratios of rates to direct costs, which provide a measure of the overhead loadings, and found that Bell Atlantic's rates for the proposed payphone features ranged from a low of 27 times greater than the direct costs to a high of more than 6,900 times greater than the direct costs.²¹ The Bureau concluded that the record before it did not justify such high levels of rates in relation to direct costs. Therefore, the Bureau directed Bell Atlantic to explain why these services should recover such a large share of Bell Atlantic's overhead costs.²² In addition, the Bureau found that Bell Atlantic had set rates based on considerations not relevant under the new services test, such as the current prices for these services in their intrastate tariffs.²³ The Bureau directed Bell Atlantic to explain in detail how its development of rates for these features complied with the new services test, Section 276, and the *Payphone Orders*.²⁴

7. In its direct case concerning its initially filed tariff, Bell Atlantic argues that the reasonableness of the rate elements for its federally tariffed payphone features must be assessed in light of associated payphone services offered in state tariffs.²⁵ Bell Atlantic argues that a state-tariffed payphone access line and the individual features on that line together constitute a single integrated service. Bell Atlantic contends that the overall rates for its federal payphone tariffs are just and reasonable when the rate for the state tariffed basic payphone service line and the rates for the optional features are both taken into account.²⁶

8. Bell Atlantic also argues that overhead loadings need not be uniform under the new services test, citing the *NYNEX Tariff Termination Order*.²⁷ According to Bell Atlantic, LECs are allowed to distribute overhead loading costs in a non-uniform manner among similar services if they adequately justify those loadings.²⁸ Bell Atlantic states that the rates under this investigation satisfy this test. It explains that the loadings for the optional features, while not uniform, allow the entire service to be compensatory, and most of the features are priced at a uniform rates to simplify the rate structures for the public.²⁹

²⁰ Bell Atlantic D&J at 8.

²¹ *Designation Order* at para. 10.

²² *Id.*

²³ *Designation Order* at para. 11.

²⁴ *Id.*

²⁵ Bell Atlantic Direct Case at 2.

²⁶ *Id.*

²⁷ Bell Atlantic Direct Case at 4, citing NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1, Memorandum Opinion and Order, 7 FCC Rcd 7940 (1992).

²⁸ *Id.*

²⁹ *Id.* at 4.

9. In opposition to Bell Atlantic's direct case, APCC contends that state rates are not relevant to the proposed federal rates and that it is appropriate to apply the new services test at the federal level only to the federally tariffed payphone features and functions.³⁰ APCC argues that since the Commission ruled that only unbundled features should be federally tariffed, the rates for unbundled features must be justified on the basis of the underlying costs of those features measured by the new services test, and not in conjunction with services tariffed at the state level.³¹

10. On October 8, 1997, Bell Atlantic filed Transmittal No. 1004 revising rates for five of the six proposed unbundled payphone features proposed in its initial tariff filing.³² Bell Atlantic explains that based on its further review, it has elected to reduce the rates for these payphone features to avoid protracted litigation.³³ In response, APCC states that, while the proposed rate reductions are in the public interest, the rates for some of the payphone features are as high as 3.4 times the direct costs.³⁴ APCC argues that in other contexts ratios of this magnitude have been found unreasonable, citing *Open Network Architecture Tariffs of Bell Operating Companies*.³⁵ APCC asserts that the revised overhead allocations are acceptable in the context of the *de minimis* rates proposed by Bell Atlantic even though they would be unreasonable in the context of other services, such as line and local usage rates. APCC requests that the Commission limit any finding that Bell Atlantic's overhead allocations are reasonable to the context of the unbundled payphone features offered by Bell Atlantic and other LECs in their federal payphone tariffs.³⁶ On October 14, 1997, Bell Atlantic filed reply comments.³⁷ It states that the Commission should terminate this investigation because it does not have interstate customers for the services offered under the initial payphone tariffs and because its newly filed tariffs, which substantially reduce the rates for the payphone features and functions that are under investigation, are unopposed.³⁸

3. Discussion

11. Because Bell Atlantic has revised the rates that were initially at issue in this investigation and did not have customers for the relevant services, we find that it is unnecessary to consider the lawfulness of those rates or to consider the need for refunds. Further, we find no basis to find that the

³⁰ APCC Opposition at 2.

³¹ *Id.* at 3.

³² Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1004 (filed October 8, 1997).

³³ *Id.*, Bell Atlantic D&J at 2.

³⁴ Comments of APCC filed in Response to Bell Atlantic Transmittal No. 1004 (October 10, 1997) ("APCC Comments") at 2-3.

³⁵ *Id.* at 3, citing *Open Network Architecture Tariffs of Bell Operating Companies*, 9 FCC Rcd 440, 458 (1993).

³⁶ *Id.* at 3-4.

³⁷ Reply Comments of Bell Atlantic (October 14, 1997).

³⁸ *Id.* at 2.

overhead loadings in Bell Atlantic's revised rates are unreasonable or that they produce unreasonable rates.³⁹ In view of Bell Atlantic's substantially reduced rates and the record support for them, we also find that the revised rates do not warrant a finding that they are based on considerations not within the scope of the new services test.

12. We reject Bell Atlantic's view that we should review the reasonableness of its payphone service tariffs in light of tariffs filed at the state level. In the *Payphone Reconsideration Order*, the Commission required LECs to file tariffs for basic payphone lines at the state level only, and that unbundled features and functions be tariffed at both state and federal levels.⁴⁰ The Commission required that all incumbent LEC payphone tariffs filed at the state and federal levels be cost-based, nondiscriminatory, and consistent with both Section 276 and the Commission's Computer III tariffing guidelines, including the new services test.⁴¹ Bell Atlantic has not provided any basis for departing from this scheme within the context of this investigation to provide for an assessment of federal charges in light of charges filed at the state level. As envisioned by the Bureau and the Commission, application of the new services test separately by state and federal authorities to payphone offerings will assure that carrier offerings to payphone service providers will be reasonable and help achieve the goals of Section 276. Accordingly, we will not assess the reasonableness of Bell Atlantic's offering of unbundled payphone features and functions by reference to state tariffs.

13. With respect to Bell Atlantic's rates, we find no basis in the revised cost data to find that these overhead loadings are unreasonable or produce unreasonable rates in this case. In particular, we note that these services are provided either at very low rates or at no charge.⁴² In addition, Bell Atlantic has explained that its overhead loadings used to develop the rates for its payphone features and functions are comparable with other tariffed services offered by Bell Atlantic.⁴³ We also note that Bell Atlantic's overhead loadings are comparable to those of other LECs. Bell Atlantic's ratio of rates to direct costs for payphone features range from a low of zero times greater than the direct costs to a high of 3.4 times greater than the direct costs while the ratio of rates to direct costs for the payphone features offered by other LECs ranges from a low of zero times greater than the direct costs to a high of 4.8 times greater than the direct costs.⁴⁴ We also agree with Bell Atlantic that the Commission's pricing requirements do not mandate uniform overhead loading provided that the loading methodology selected as well as any deviation from it is justified.⁴⁵ Accordingly, we find record support for Bell Atlantic's overhead loadings

³⁹ Bell Atlantic did not revise its rate for the interLATA dialing service offered in its initial tariff. The overhead loading for this rate is 38 percent of direct costs. APCC has not objected to this rate in this proceeding. We find no basis on this record for finding this rate or its overhead loading unreasonable.

⁴⁰ *Payphone Reconsideration Order*, 11 FCC Rcd at 21307-09.

⁴¹ *Payphone Clarification Order* at para. 2, citing *Payphone Reconsideration Order*, 11 FCC Rcd at 21308.

⁴² The revised rates range from no charge for two of the services to a monthly rate of \$0.15 for two other proposed services.

⁴³ Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1004 (D&J) at 4-5. For example, Bell Atlantic's Premier Messaging Service Interface uses a non-uniform overhead loading with a rate of 3.59 times greater than the direct costs.

⁴⁴ See, e.g., NYNEX Tariff F.C.C. No. 1, Transmittal No. 452; US West Tariff F.C.C. No. 5, Transmittal No. 858; and Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1932.

⁴⁵ *Part 69 ONA Order*, 6 FCC Rcd at 4531.

and find no basis for finding that they are unreasonable under the new services test or produce unreasonable rates. In *Open Network Architecture Tariffs of Bell Operating Companies*, the Commission concluded that US West's overhead rates for Open Network Architecture (ONA) features were unsupported because it failed to provide a reasonable explanation for its overhead loadings for those rates.⁴⁶ We do not find that our determination here concerning overhead loadings for Bell Atlantic's provision of payphone features and functions will necessarily be determinative in evaluating overhead loadings for other services.

14. In light of Bell Atlantic's substantially reduced rates and the record support for them as described above, we find no basis to find that the rates are based on factors other than direct costs and overhead loadings. Therefore, we also find that the revised rates do not warrant a finding that they are based on considerations not within the scope of the new services test.

B. GTE's Transmittals

Issue A: Whether GTE's direct investment for SCOCS is reasonable.

1. Background and Contentions

15. In Transmittal 206, GTE added to its two federal access service tariffs an unbundled, payphone-specific feature called Selective Class of Call Screening (SCOCS). This feature enables the customer to block outgoing 1+, 0+, and 0- calls that are charged to the originating number.⁴⁷ In the *Designation Order*, the Bureau noted that GTE's cost justification for SCOCS was based upon a claimed direct switching investment of about \$50 per line per year and that this was significantly higher than the direct investments reported by other LECs for similar services.⁴⁸ The Bureau tentatively concluded that GTE's direct investment of \$50 per line for SCOCS was unreasonable and raised a substantial question that the SCOCS rates were unreasonable. The Bureau directed GTE to provide detailed information regarding its derivation of the unit investment of \$50 per line for SCOCS.⁴⁹

16. In its direct case, GTE explains that the bulk of the unit investment of \$50 per line for SCOCS was based on cost estimates for switching investment of \$44 per line per year.⁵⁰ According to GTE, this initial estimate in its tariff transmittals for switching investment was based on estimated calling patterns for the SCOCS feature (three call attempts during periods of busy network usage) and the assumption that it would be necessary to utilize a particular switch function from Bellcore's SCIS model

⁴⁶ *Open Network Architecture Tariffs of Bell Operating Companies*, 9 FCC Rcd at 458 (1993).

⁴⁷ GTOC Tariff F.C.C. No. 1, Transmittal No. 1095, and GSTC Tariff F.C.C. No. 1, Transmittal No. 206, both issued May 19, 1997. In these transmittals, GTE also clarified certain matters unrelated to payphone features, such as the application of its multiline end-user subscriber line charges and the addition of certain provisions regarding the warehousing and hoarding of toll-free subscriber numbers. We excluded from the application of the *LEC Payphones Functions and Features Suspension Order* the tariff revisions included in these two transmittals that are unrelated to GTE's provision of payphone features and functions. Those provisions became effective on June 3, 1997.

⁴⁸ *Designation Order* at para 12.

⁴⁹ *Id.*

⁵⁰ GTE Direct Case at 2.

known as Selective Carrier Denial.⁵¹ In its direct case, GTE asserts that based on its reexamination since its initial tariff filing of the available industry data, it can assume one call attempt during periods of busy network usage instead of three and that a different, more economical SCIS function known as Code Restriction and Diversion is available.⁵² GTE maintains that the lower assumed busy hour call attempts and the different feature selection produce a lower estimate of costs resulting in a revised switching investment estimate of \$6.00 per line per year. GTE asserts that it will amend its payphone tariff to reflect the revised switching estimate.⁵³ In response to GTE's direct case and revised tariff filing, APCC agrees with GTE's acknowledgement that its earlier estimate of direct investment for the SCOCS feature was incorrect, and it states that GTE's revised investment cost is much closer to the investment costs estimated by other incumbent LECs.⁵⁴ GTE filed its revised tariffs on September 5, 1997. APCC did not respond separately to GTE's September 5, 1997 tariff filing.

3. Discussion

17. GTE's revised direct switching investment per line is substantially reduced from its initial tariff filing. There is no basis in the record for finding, nor is it alleged, that the \$6.00 per line per year direct investment produces an unlawful charge. Accordingly, we find no basis on this record for finding that this direct investment is unreasonable or that the rates based on it are unlawful.

Issue B: Whether GTE's rates for SCOCS are consistent with the "new services test."

1. Background and Contentions

18. GTE stated in its initial transmittals that its rates for SCOCS would be recovered through both recurring and nonrecurring charges, and that nonrecurring charges would mirror the nonrecurring installation charges contained in its existing local exchange tariffs in order to minimize arbitrage and tariff shopping that might result between GTE's federal and local exchange tariffs.⁵⁵ Based on this approach, GTE's Transmittal Nos. 206 and 1112 proposed widely different rates for the two separate study areas in California covered by the two transmittals.⁵⁶ GTE's Transmittal No. 206 set a \$1.99 monthly charge for SCOCS with no nonrecurring charges whereas Transmittal No. 1095 established a \$23.00 nonrecurring

⁵¹ *Id.*

⁵² *Id.*

⁵³ See GTOC Transmittal No. 217 and GSTC Transmittal No. 1112 filed September 5, 1997. On September 19, 1997, the Division released an order finding that the GTOC and GSTC transmittals raised the same issues of lawfulness as Transmittal Nos. 206 and 1095. Accordingly, the Division suspended Transmittal Nos. 217 and 1112 for one day, instituted an investigation of those transmittals, consolidated that investigation into the investigation initiated in CC Docket No. 97-140, and subjected the rates proposed in Transmittal No. 217 and 1112 to the accounting order imposed in CC Docket 97-140 in order to facilitate any refunds that may later prove necessary. *Local Exchange Carriers' Payphone Functions and Features*, CC Docket No. 97-140, Order, DA 97-2035 (rel. Sept. 19, 1997).

⁵⁴ APCC Opposition at 4.

⁵⁵ GTE Reply to APCC Petition at 4.

⁵⁶ Although these transmittals were company-wide, APCC only raised concerns with respect to SCOCS rates in two study areas in California.

charge and a monthly charge of \$1.69.⁵⁷ In the *Designation Order*, the Bureau expressed concern that by mirroring the nonrecurring installation charges contained in its existing local exchange tariffs, GTE had set rates for SCOCS based on considerations not relevant to the new services test since rates would be set on factors other than the direct costs and a reasonable overhead loading.⁵⁸ The Bureau directed GTE to explain in detail how its determination of rates complies with the new services test, Section 276, and the *Payphone Orders*. In particular, the Bureau directed GTE to demonstrate how the nonrecurring charges and any recurring charges for SCOCS individually comply with the new services test.⁵⁹

19. In its direct case, GTE describes its tariff revisions that it filed after the initial tariff was set for investigation. GTE states that its tariff revisions establish a \$5.00 nonrecurring rate for every state it serves, eliminating the large variations in nonrecurring charges attributable to mirroring discussed in the *Designation Order*.⁶⁰ GTE states that the new monthly recurring rates range from \$.27 to \$.33 a month as compared to the original range of \$1.07 to \$2.02 a month. GTE asserts that the pricing information submitted in its direct case demonstrates that the new and lower proposed rates for SCOCS only recover the direct cost of the service plus a reasonable allocation of company overheads.⁶¹

20. APCC asserts that GTE's revised tariff still proposes unreasonable overhead loadings.⁶² APCC sees no reason why overhead loading allocations should exceed 30 or 40 percent of the direct costs.⁶³ In addition, APCC finds GTE's proposed uniform non-recurring charge of \$5.00 excessive in relation to the low annual cost (\$3.78 to \$4.73) attributed to the service.⁶⁴ APCC also states that most large LECs apply a nonrecurring charge only if SCOCS-type screening service is ordered after the installation of the payphone line. Thus, APCC states that GTE should not be permitted to impose the nonrecurring charge unless SCOCS is ordered after installation of the payphone line.⁶⁵

21. In its rebuttal, GTE responds that APCC's statement that GTE is now proposing an unreasonable overhead loading ratio is incorrect.⁶⁶ Using as an example its calculations for the State of Arkansas in Exhibit 1 of its Direct Case, GTE states that APCC based its overhead loading calculations on a \$0.08 direct cost figure that excludes other direct costs, such as order processing, customer billing,

⁵⁷ *Id.*

⁵⁸ *Designation Order* at para. 16.

⁵⁹ *Id.*

⁶⁰ GTE Direct Case at 3. GTE filed their revised tariffs on September 5, 1997.

⁶¹ *Id.*

⁶² APCC Opposition at 4-5.

⁶³ *Id.* at 5.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ GTE Rebuttal at 2.

and software expenses.⁶⁷ GTE also argues that APCC should have calculated overhead costs that encompasses additional costs, including the Commission's prescribed 11.25 percent rate of return, order processing, customer billing, and software expenses, all of which are recoverable under the Commission's rules, according to GTE.⁶⁸ GTE states that using all recoverable costs results in a \$0.35 monthly charge that includes recurring and nonrecurring costs instead of the \$0.08 monthly charge used by APCC in its calculations.⁶⁹ GTE states that its \$5.00 nonrecurring installation charge is justified because it is only charging \$0.28 for its recurring monthly charge even though its costs could justify a \$0.35 monthly charge.

3. Discussion

22. Our analysis of GTE's revised recurring charges for SCOCS shows, on average, a rate to direct cost ratio of 2 (rates are two times greater than its direct costs for this service).⁷⁰ This ratio is comparable to the ratio of rates to direct costs for similar LEC services.⁷¹ Further, the record does not show that the costs GTE has included in its overhead loadings are unreasonable in this case. There is no other information in the record showing that the proposed recurring charges and the overhead loadings are unreasonable under the new services test.

23. As explained by GTE in its direct case, it has chosen to recover a portion of its SCOCS costs through a nonrecurring charge. GTE has failed, however, to submit any cost support justifying the \$5.00 nonrecurring charge. While it might be reasonable to recover SCOCS costs through a combination of recurring and nonrecurring charges, GTE unsupported statement that its has chosen to charge \$0.28 instead of \$0.35 in recurring charges does not justify a \$5.00 nonrecurring fee. Nor has it explained how this charge was derived consistent with the new services test. Moreover, GTE has not addressed APCC's concern that limiting application of the nonrecurring charge to requests for SCOCS after installation of the line is the only proper application of nonrecurring charges. Accordingly, we find that GTE has failed on this record to justify its \$5.00 nonrecurring charge for SCOCS. We therefore find this charge unlawful on this record. Its recurring charge for SCOCS may remain in effect. Based on GTE's statement that there have been no customers for the payphone services made available in its federal access tariff, we find that it is not necessary to direct GTE to make refunds with respect to its nonrecurring charges.

IV. CONCLUSION

24. As explained, the initial Bell Atlantic and GTE rates at issue in this proceeding have been revised. Because the carriers had no customers for the services offered under the original tariffs, we do

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ For example, for the State of Arkansas, GTE's monthly rate of \$0.28 for SCOCS is approximately two times greater than the direct costs for the service. The direct costs, which include switching investment and items such as order processing and software expenses, are derived by deducting overhead costs (administration and marketing expenses) from the total annual costs.

⁷¹ The ratio of rates to direct costs for similar payphone features offered by other LECs range from a low of zero times greater than the direct costs to a high of 4.8 times greater than the direct costs. *See, e.g.*, US West F.C.C. Tariff No. 5, Transmittal No. 858 and Pacific Bell F.C.C. No. 128, Transmittal No. 1932.

not need to determine whether the rates established in them were unlawful or whether refunds should be required. Finally, for the reasons discussed above, we find no basis on the record for finding Bell Atlantic's rates, as revised, unlawful. However, we find GTE's revised \$5.00 nonrecurring charge for SCOCS is unlawful. Therefore, GTE is directed to file tariff revisions removing this unlawful rate no later than 5 days from the release date of this Memorandum Opinion and Order. GTE may seek to justify a nonrecurring charge for SCOCS by means of adequate cost support and a demonstration of compliance with the new services test. Because GTE does not have customers for SCOCS under this tariff, it is not necessary to order refunds.⁷²

V. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket 97-140 with respect to Bell Atlantic Telephone Companies Transmittal Nos. 962, 966 and 104 and GTE System Telephone Companies Transmittal No. 206 and 217 and GTE Telephone Operating Companies Transmittal No. 1095 and 1112 ARE TERMINATED.


26. IT IS FURTHER ORDERED that pursuant to Sections 4(i), 201(b), 204(a), of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 204(a), that the nonrecurring charge identified in this Order and contained in payphone features and functions tariffs filed by GTE Systems Telephone Companies and GTE Telephone Operating Companies, described in para. 22, *supra.*, IS UNLAWFUL.

⁷² See Letter dated October 21, 1997, from W. Scott Randolph, Director, Regulatory Matters, GTE to Federal Communications Commission (indicating that GTE has no customers for its interstate SCOCS service, either as originally proposed or as revised).

27. IT IS FURTHER ORDERED that GTE System Telephone Companies and GTE Telephone Operating Companies SHALL FILE tariff revisions, as discussed in para. 24, *supra.*, to become effective on seven days' notice.

28. IT IS FURTHER ORDERED that Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58 and 61.59, ARE WAIVED for the purposes of this compliance Order. GTE Systems Telephone Companies and GTE Telephone Operating Companies should cite the "FCC" number of this Order as authority for their tariff filings.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary